IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2325 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAVJIBHAI BECHARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP, for Respondents No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/05/2000

ORAL JUDGEMENT

1. Petitioner-Mavjibhai Becharbhai Patel came to lbe detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), by virtue of

an order passed by the District Magistrate, Gandhinagar, on March 3, 2000, in exercise of powers under Section 3 of the said Act. The order was passed with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies of essential commodities like edible oil essential to the community.

2. The petitioner is Director of a company known as Welcome Pretein Ltd., Chhatral and the petitioner is managing the affairs of that company. During the course of inspection carried out on January 25, 2000, certain irregularities were detected and, therefore, the petitioner came to be detained under the provisions of the PBM Act.

3. The petitioner-detenu challenges the order of detention on various grounds. However, learned advocate, Mr. Prajapati, has pressed into service two grounds, viz. (1) delay on part of the Central Government in considering the representation made on behalf of the detenu; and (2) non-supply of legible documents to the detenu, affecting right of detenu of making an effective representation.

3.1 In order to substantiate his arguments, Mr. Prajapati has placed reliance on the affidavit in reply filed on behalf of the Union of India. He submitted that as per the affidavit, one representation dated the 24th March, 2000 was received by the Central Government on the 29th March, 2000. Another representation dated the 23rd February, 2000 was received by the Central Government on the 3rd April, 2000. Parawise comments were invited from the State Government by the competent authority in the Central Government by letter dated the 6th April, 2000. Mr. Prajapati, therefore, submitted that the first representation received by the Central Government on the 29th March, 2000 remained unattended till 6th April, 2000. The affidavit does not state as to how the time was consumed. All that it states is that the authority desired parawise remarks to be called for from the State Government and, therefore, they were called for from the State Government. Mr. Prajapati, therefore, submitted that this delay has affected the right of the detenu of making an effective representation and his continued detention is, therefore, bad in law.

3.2 To support his second contention, Mr. Prajapati has taken this Court as well as learned Assistant Government Pleader, Mr. Dave, through the documents supplied to the detenu and has tried to demonstrate that the documents supplied to the detenu are not legible.

These are documents which are basic documents and, therefore, they ought to have supplied to the detenu along with the grounds of detention, which were, in fact, supplied but were not legible and, therefore, it amounts to non-supply of these documents, according to Mr. Prajapati. The petitioner, therefore, was adversely affected in his right of making an effective representation. He, therefore, urged that the petition may be allowed by quashing and setting aside the order of detention.

4. Respondents No.1, 2 and 3 are represented by learned Assistant Government Pleader, Mr. Dave. He submitted that no prejudice is caused to the detenu as, subsequently, on demand, the documents claimed to be illegible have been supplied to the detenu. He further submitted that the documents which are shown to be illegible, if they are read along with the statements A, B and C, there would be nothing left to imagination for the detenu and, therefore, no prejudice is caused. The petition, therefore, may not be allowed on ground of non-supply of legible documents.

5. Ms. Davawala representing the Union of India, respondent No.4, submitted that the representation received on the 29th March, 2000 was considered by the authority and parawise remarks were called for on the 6th April, 2000. Two holidays intervened between these two dates and, therefore, there is not much delay that can be attributed to the Central Government, which can be said to have affected the right of the detenu of making a representation as guaranteed under Article 22(5) of the Constitution. She, therefore, submitted that the petition may not be allowed on this ground.

6. Having regard to rival side contentions, this Court is taken through the documents supplied to the detenu along with the grounds of detention. The learned advocate for the petitioner, successfully, demonstrated that many of the documents are not legible, particularly that portion of the documents is not legible which will have a direct relevance on the very founding of the case of the detenu. He could also demonstrate that the attempt on part of learned Assistant Government Pleader to indicate that the material in the documents can be co-related with the help of the statements mark A, B and C is also futile because contents of statement C is not legible, so also contents of statement B. The detenu would, therefore, be not able to represent his case properly. Even if the statements are prepared in his presence and he has signed, he cannot be expected to

remember adverbatim and then explain or forward his case. It is the duty of the detaining authority to communicate to the detenu the grounds on which the order has been passed and afford him the earliest opportunity of making a representation against the said order to the appropriate Government. Non-supply of these documents would result into denial of this right under Section 8 of the PBM Act guaranteed to such detenus. Under the circumstances, the first ground of non-supply of legible documents deserves to be accepted.

7. So far as the second ground is concerned, it may be noted that, admittedly, a representation was received on the 29th March, 2000. The second representation was received on the 3rd April, 2000 and parawise remarks were called for from the State Government by telegram dated the 6th April, 2000. The Central Government, in the affidavit in reply, has not given any material to indicate as to how the time was consumed, as to when the representation was first attended to by the competent authority and in what so much of time was consumed for considering the representation running in one and a half pages, particularly when the Central Government have already had the report of the State Government on detention, which was received by the Central Government on the 16th March, 2000. The delay having remained unexplained, except that there were two intervening holidays, has affected the right of the detenu of making an effective representation. Even if these two holidays are considered, it would leave five clear days during which the representation has remained unattended. Under the circumstances, the petition deserves to be allowed even on this ground.

8. For the foregoing reasons, the petition is allowed. The impugned order of detention dated March 3, 2000, passed against the detenu is hereby quashed. The detenu-Mavjibhai Becharbhai Patel is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt